

John Curtin

From: John Curtin [jcurtin@cappat.com]
Sent: Monday, May 18, 2009 10:31 AM
To: 'kenneth.wieder@uspto.gov'
Subject: FW: from john curtin, esq
Attachments: US Application No 09751159 (zipped) Folder.zip; US Application No. 09477880 (zipped) Folder.zip; 2007-05-24 Appeal Brief 09767839 (Acceptable) pdf; 2007-06-20 Appeal Brief 09919047(Acceptable) pdf; 2007-06-25 Appeal Brief 10073931(Acceptable) pdf

Examiner Wieder:

Here is the email we originally sent to Examiner Green, thx.

John F. Curtin, Esq.
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On behalf of the



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From: John Curtin [mailto:jcurtin@cappat.com]
Sent: Tuesday, April 07, 2009 2:58 PM
To: 'earline.green@uspto.gov'
Subject: from john curtin, esq

Mrs. Green:

In January we spoke about two applications that received Abandonment Notices during 2007.

The applications are S/N 09/751,159 and 09/477,880.

As we understand it the reasons for the abandonments were due to our failure to format the Appeal Briefs properly. More particularly, in Section VII, Summary of The Claimed Subject Matter, we placed the citations to the specification at the end of the claims instead of within the claims.

That said, we do not know the exact basis for the abandonments and could not get anyone at the PTO to articulate one. It is our understanding that the formatting of the Appeal Briefs was reviewed by a separate clerical group, not the Examiner on the application.

Here is our dilemma. We do not know how to proceed.

At the same time these Appeal briefs were being rejected for improper formatting others were being accepted that used the same formatting. For example, S/N 09/767,839, 09/919,047 and 10/073,931.

Worse yet, in the two applications that were rejected we tried multiple times to correct the formatting but each time it was rejected. We have never been given a satisfactory explanation for the abandonments. In addition, it appears that different Appeal Brief clerks were applying different standards of review to the formatting. Worst of all these abandonments have caused substantive hardship to our client.

After we received the second Abandonment Notice in October 2007 we decided to file a Petition. However, the USPTO then announced it was changing the Appeal procedure again. So, we decided to wait until the new rules were announced. However, the USPTO then decided not to change the Appeal procedure. We then called you.

HELP!!!

We just need some guidance on how to proceed. If we have to we can file Petitions but they are costly to our client. We do not think the abandonments can be justified given the different ways in which the clerical group was applying the formatting rules.

We have attached the Appeal Briefs in the two applications that received abandonment notices as well as the three applications where the Appeal Briefs were accepted.

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